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APPLICATION OF

SHENANDOAH VALLEY ELECTRIC COOPERATIVE

CASE NO. PUE000747

For a general rate increase

HEARING EXAMINER'S RULING

July 20, 2001

On June 29, 2001, Shenandoah Valley Electric Cooperative ("SVEC" or the "Cooperative") filed a Motion for Implementation of TIER Credit Billing Factor on an Expedited Basis in the captioned case. SVEC requests implementation of the credit ("TCF" or the "factor") on an interim basis, pending resolution of this rate case. SVEC further requests expedited treatment and waiver of the notice requirements of Virginia Code §§ 56-237 and -237.1.

In support of its motion SVEC avers that the demand rates charged by the Old Dominion Electric Cooperative ("ODEC") have been reduced approximately 20%, but the fuel factor increased from \$0.00595 to \$0.01424 per kWh, approximately a 139% increase. SVEC has been working to develop a method to offset the increased fuel factor with SVEC earnings whenever it exceeds its authorized TIER for a given month. SVEC asserts that it has developed certain accounting and general guidelines to support the TCF and believes it is a viable mechanism that can be implemented on an interim basis while the rate case is pending. A June 2001 sample bill for a typical SVEC residential customer using 1,280 kWh per month was attached. The sample bill reflects an increase of \$8.56 due to SVEC's proposed increase in this case and a net increase of \$18.26 in the fuel component over a typical bill for June 2000. The total bill reflects approximately a 31% increase. SVEC represents that if the TCF had been in place for June 2001, the customer would have received a credit of \$2.58 against the total bill, but the total bill would still have reflected an increase of over 28%.

To derive the TCF each month, SVEC would calculate the actual operating TIER achieved over all previous months in 2001, or, on or after January 1, 2002, over the previous twelve months. The actual achieved operating TIER would then be compared to its proposed operating TIER of 2.33 or, at the conclusion of this case, the TIER approved as just and reasonable by the Commission. If the actual achieved operating TIER is greater than the authorized TIER, the total dollar difference would be calculated. This dollar amount would then be divided by the total kWhs delivered in the period for which the TIER analysis was performed, to arrive at a \$/kWh TCF. The TCF would be applied against the monthly fuel adjustment factor as calculated for SVEC's wholesale power adjustment, Schedule WPA. The resulting number would be the monthly billing factor used to reduce each customer's bill.

Staff opposes interim implementation of the TCF and raised concerns with the legality of the factor in its response to the Motion. Staff asserts that the TCF violates Virginia Code § 56-582 in the Virginia Electric Restructuring Act ("Restructuring Act").¹ Staff argues that the factor is calculated on a backward-looking basis and the Restructuring Act requires rates to be calculated on a forward-looking basis. Staff argues that the factor amounts to a discount to the proposed capped rates, that discounts are not lawful under the Restructuring Act, and that the factor does not meet the allowed criteria established in the Restructuring Act for adjusting capped rates. Staff further suggested that the Cooperative could propose reduced rates or modify its policy on the rotation of capital credits as alternative means to reflect the reduced demand costs. Staff also identified several terms that it believed lacked clarity.

Finally, Staff opposes Shenandoah's request to implement the factor without public notice. Staff asserts that since the Commission will approve rates in this case that will be in effect until January 1, 2007, the factor may influence the development of competition in the Cooperative's service territory and power supply options available to its members. Staff observes that public notice is intended to inform all interested persons, not only customers.

SVEC replied to Staff, first reiterating that it proposed the factor as a way to deal with the unexpected ODEC demand reductions, but did not propose to build the reductions into base rates since SVEC does not know how long the reductions will continue. SVEC next addresses Staff's legal arguments asserting that the Restructuring Act does not preclude consideration of historic data in establishing forward-looking rates, but rather directs that rates be set in such a way that rates will be just and reasonable moving forward. Moreover, SVEC argues that capped rates will be established in this case, but the list of allowed adjustments to capped rates is not yet applicable since capped rates are not now in effect. Rather, SVEC argues that the TCF is requested as part of the Cooperative's rate cap plan. Addressing Staff's suggestion that the Cooperative could change its policy on rotation of capital credits, SVEC asserted that changing policy would be too difficult and costly. SVEC did make several changes to the proposed schedule to address Staff concerns with the clarity of some of the terminology.

SVEC continues to urge the Commission to implement the factor without requiring any additional public notice because the factor will result in either a decrease or no change to customer rates and therefore will not financially disadvantage customers. Moreover, SVEC asserts that Virginia Code § 56-40 allows the Commission to put proposed revisions to rate schedules into effect without notice when the revision does not effect a rate increase. SVEC concluded that there is no reason not to implement the factor on an interim basis pending final resolution of this issue during this case.

Upon consideration of the motion and the related pleadings, I find that interim implementation of the factor can not be granted at this time. It is commendable that SVEC has sought interim implementation of a credit that could result in a small but immediate rate reduction. However, I am reluctant to grant implementation of a mechanism that can

¹Virginia Code § 56-576 et seq.

not be easily undone if not approved as implemented without more fully developed evidentiary support. A hearing to receive evidence is now scheduled for September 10, 2001, less than two months away. The rates currently in effect are subject to refund. Thus, any rates and/or credit mechanisms ultimately approved will be effective for service on and after January 1, 2001, and appropriate refunds, if any, will be ordered. Moreover, the Cooperative has understandably made no offer to stand at risk if the TCF is not approved. To the contrary, the Cooperative asked that any amounts credited under the mechanism be considered in establishing refunds if the Commission ultimately approves less than the requested increase.

Further, Staff has raised legal and factual concerns with the proposed factor that must also be fully addressed and developed on the record. Specifically, several alternatives appear to exist to assure the demand reductions benefit the customer, including lower rates as has been recommended in one recent case.² Staff also has questioned whether a credit should be appropriately applied to the Cooperative's fuel component. It is unclear what effect such an adjusted fuel component might have on customers' decisions to seek alternative suppliers. In its reply to Staff, SVEC acknowledges that not all issues related to the TCF have been resolved, and further recognizes that the factor is based on the Cooperative's total operating margins, and "[b]ecause the TCF factor is calculated on the performance of the total SVEC system, the TCF factor could be credited anywhere on the bill."³

I also find that no further notice is required. The Restructuring Act requires a forward-looking analysis in this case. I would expect any changes that would affect the Cooperative moving forward to be raised in this case, although it is limited by the maximum increase in revenue noticed to the public. Moreover, the factor or any alternative considered to address the reduced demand costs would not affect an increase above the level already noticed. Therefore, even if presented in isolation, Virginia Code § 56-40 allows the Commission to implement reductions without notice.

I thus find that evidence on the proposed factor should be received at the hearing scheduled for September 10, 2001. At that time, the Cooperative may, if it chooses, renew its request for interim approval of its proposed TCF, or some variation thereof.

Accordingly, SVEC's Motion for Implementation of TIER Credit Billing Factor on an Expedited Basis should be, and hereby is, **DENIED** without prejudice to renew after the hearing scheduled to receive evidence on the Cooperative's application.

Deborah V. Ellenberg
Chief Hearing Examiner

² *Application of BARC Cooperative*, Case No. PUE000232, Hearing Examiner Report dated June 29, 2001.

³ Reply at 6.